



Judicial Ethics Advisory Committee

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PRESS RELEASE

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FOR IMMEDIATE RELEASE

December 17, 2008

The Arkansas Judicial Ethics Advisory Committee issued an advisory opinion to Attorney Mark Leverett of Little Rock, Arkansas. Effective January 1, 2009, Attorney Leverett will become the Little Rock District Judge for Third Division. This position is part-time. Attorney Leverett requested an opinion as to whether he can concurrently serve as a Pulaski County Deputy Prosecuting Attorney.

The Judicial Ethics Advisory Committee addressed his concerns in the enclosed advisory opinion.



Judicial Discipline & Disability Commission

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DAVID A. STEWART
EXECUTIVE DIRECTOR

December 12, 2008

CORRECTED COPY

Mr. Mark Leverett
1501 S. Main St.
Little Rock, AR. 72202

Re: Advisory Opinion 2008-08

Dear Mr. Leverett:

You have informed us that effective January 1, 2009, you will be the Little Rock District Judge for Division Three. That position is part-time. You ask whether you can concurrently serve as a Pulaski County Public Defender. You mention that you will be assigned to defend cases in Sherwood, which like Little Rock is in Pulaski County.

Issuing arising from part-time district judges have come before this committee on numerous occasions. Part-time district judges are permitted to engage in the private practice of law. The Arkansas Code of Judicial Conduct permits it, and our prior opinions have acknowledged that reality.

However, we have emphasized that the judicial duties and responsibilities are paramount to any private practice. The principles of judicial independence and integrity, competence, and the avoidance of the appearance of impropriety require that a judge, even a part-time judge, may not engage in the full range of private law practice. We have mentioned the dangers of a part-time judge maintaining a concurrent law practice. Opinion 99-02. A review of our earlier opinions reveals the following:

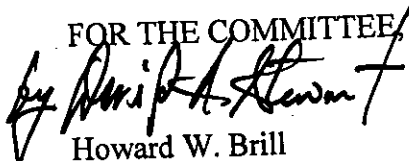
- 1) Criminal defense practice. A part-time district judge may not represent criminal defendants in any court in the circuit in which the judge presides. See Opinions 98-02; 98-03; 2002-04; 2005-04. We note that the new Code of Judicial Conduct now pending before the Arkansas Supreme Court limits that prohibition to the same county.

- 2) Private practice: A part-time judge for a city may not represent the city in any capacity in any forum. Opinion 97-04. A part-time judge for a city should not be the county attorney in the same county. Opinion 99-02. A part-time judge in one municipality in a county may serve as city attorney for another municipality in the same county. Opinion 2005-03; Opinion 2008-01. We have cautioned against a part-time judge continuing employment with Legal Aid of Arkansas. Opinion 2004-07. In general, a part-time judge should avoid private practice that requires excessive recusal. Opinion 2008-04.
- 3) Part-time prosecutor. Nothing in the Code of Judicial Conduct specifically addresses the issue of whether a judge may also be a prosecutor. However in our opinion 2005-03 we specifically stated: "A person cannot be both a judge presiding over criminal cases and a deputy prosecutor in the same county."

We re-iterate that the principles found in the Code that limit the ability of a part-time judge to be a criminal defense attorney are also applicable to the role as prosecutor. Indeed the restrictions are arguably even more stringent in that the individual would be wearing two public hats, namely that of a judge and a prosecutor. However we are not today ruling on whether a part-time district judge can be a prosecutor in a different county or a different circuit. That issue is not before us.

CONCLUSION: The code of Judicial conduct prohibits a part-time judge from serving as a deputy prosecuting attorney or representing criminal defendants in the same county.

FOR THE COMMITTEE



Howard W. Brill